IN THE HIGH COURT OF DAR ES SALAAM

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 100 OF 2019

THE JUBILEE INSURANCE CO. (T) LTD.....APPELLANT

VS

ANUEL S. MDUMA.....1ST RESPONDENT

LESLEY EDWARD

ABRAHAM GURUMO.....2ND RESPONDENT

Date of Last Order: 02/05/2022
Date of Judgment: 15/07/2022

JUDGEMENT

MGONYA, J.

The Appellant above being aggrieved by the decision of the Kinondoni Resident Magistrate's Court as stated above has lodged an appeal before this Court with **six (6) grounds** of appeal, to the effect that:

1. ***That, the trial Magistrate erred in law and facts that it granted the allegedly compensation for specific damages to the 1st Respondent herein to the tune of Tshs.***

50,000/= per day without any justification and proof thereof,

2. *That, the trial Magistrate erred both in law and in facts, in awarding to the 1st Respondent herein in full amount related to disputed repair costs of the damaged Motor Vehicle based on mere estimates, the same which was not proved nor tendered in Court by the person who had prepared the estimates;*

3. *That, the Trial Magistrate grossly misdirected himself in that he granted storage costs of the motor vehicle at the rate of Tshs. 3000/= per day from November 2010 to June and the rate of Tshs. 10,000/= per day from July 2012 to 30th October 2014 without any supporting evidence of expenditure and receipts thereof;*

4. *That, the trial Magistrate erred both in law and in facts by ordering compensation for general damages in favour of the 1st Respondent without justification and or assigning reasons thereof;*

5. ***That, the trial Magistrate grossly misdirected itself, in that it awarded to the 1st Respondent interests on the decretal sum at the rate of 40% instead of the applicable 7% to 12% of the Court rules; and***

6. ***That, the trial Magistrate erred both in law and fact in awarding twice interests of the decretal sum.***

The appeal before the Court was ordered to be disposed off by way of written submissions. Subject to the filing of the submissions as ordered enabled this Honourable Court to determine the appeal.

Having read thoroughly the submissions of both sides with an exception of the 2nd Respondent for the matter was heard *ex parte* against him; I have no intentions of reproducing the submissions but all the submission shall be considered in determining the appeal at hand. However, it is in the Appellant's submission that they pray to abandon the sixth ground and consolidate the first and the third grounds of appeal.

To begin with the **first** and **third grounds** as consolidated by the appellant, the same states that the trial

Magistrate erred in granting compensation for specific damages to the 1st Respondent to the tune of **Tshs. 50,000/=** per day being costs for hiring a taxi and **Tshs. 3000/=** per day from **November 2010 to June 2012** and **Tshs 10,000/= per day from July to October 2014** being storage costs of the damaged car at the garage without any justifications or proof of such costs.

The Appellant on the first and third grounds of appeal challenges the trial Court for granting specific damages of **Tshs. 50,000/=** per day being cost incurred by the 1st Respondent for hiring a taxi since he could not use his car that was damaged as a result of an accident with another car that was insured by the Appellant. It was also the appellant's submission that the 1st Respondent also was granted costs of **Tshs 3,000/= and Tshs. 10,000/=** per day being storage costs at the garage where the car was repaired. It is the Appellant's dissatisfaction that all these costs were granted without any justification or proof.

The 1st Respondent strongly argued the said ground by insisting that the Court had not erred in any way in granting the specific damage and the storage costs. However, much efforts were cemented on arguing on the specific damage which is **Tshs. 50,000/=** and costs for storage appeared to

be abandoned for the same was not argued in the 1st Respondent's submission.

The 1st Respondent emphasized that the said cost was pleaded and later proved by the testimony of PW1, PW2 and PW 3. These witnesses informed the Court that the 1st Respondent had to hire a car to run errands that were done by his car that was involved in an accident. It was in the 1st Respondent's submission that the trial Court was bound by deciding on balance of probabilities requiring the testimony to be backed up by documentary evidence is misleading the Court.

At this point, and particularly after the above argument, it should be well reminded that in our jurisdiction specific damages ought to be **specifically pleaded and strictly proved**. It is not a new creature but has been stated in a plethora of cases from the Court of Appeal and the High Courts. I do not join hands with the 1st Respondent that the proof of the same should be on balance of probabilities after case laws have already established that the same require **strict proof.**

It is in the circumstance that naturally when the 1st Respondent was being charged by the taxi driver of **Tshs. 50,000/=** per day should have been issued a receipt to prove the charges or acknowledge that was charged and paid by him. Mere words and absence of a receipt does not amount to strict

proof. In the case of ***SOLVOCHEM HOLLAND B. V vs CHANG QUING INTERNATIONALE INVESTMENT CO. LTD, Commercial Case No. 63 of 2020,*** My brother Nangela J; has well stated on the requirement of specific damages to require strict proof. The same was also established in the case of ***ZUBERI AUGUSTINO vs ANICET MUGABE [1992] TLR 137,*** where the Court held that:

> **"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved".**

It is from the above that, **I find the 1st and 3rd grounds of appeal as consolidated holds water and are therefore meritious.**

On the **second ground** of appeal, it is the Appellant's claim that the trial Magistrate erred in awarding full amount related to the disputed repair costs of the damaged Motor vehicle based on mere estimation which was not proved nor tendered before the Court. The Appellant states that the amount of **Tshs. 8,283,600/=** that the 1st Respondent claimed to have been repair estimations were calculated by the garage operator.

In intending to tender the same it was objected since the person that was tendering it for evidence before the Court was

not the author of the said estimations. It was also after that the said author was never summoned to appear and testify on the estimation so the Appellant would have had a chance to cross examine the latter. The Appellant strongly states that the said estimations were granted as prayed but however, they were not proved before the Court.

The 1st Respondent on the other hand opposed the Appellant's submission by stating that, the Appellant is estopped from denying the admissibility and evidential value of the repairs because the Appellant through DW1 testified that an opportunity was availed for them to have seen the said estimation but were only ready to pay **Tshs. 3,400,000/=.** However, the Court through its judgement states that in its findings and assessment found **Tshs. 8,283,600/=** to have been reasonable.

Having respectively read the submission with regards to this ground of appeal, I find that the argument is based on the amount that the Appellant states not to have been proved. It is so since the estimations were not admitted in Court for the one tendering the same was not competent to do so. The 1st Respondent states the amount is what the Court found reasonable after assessment of the same and that the estimations were tendered in Court.

Having gone through the trial Court record before me I have not found in place evidence of the estimations argued of by both parties. However, the law has developed when it comes to who can tender evidence. An exhibit can be tendered in Court by a party who has knowledge of the same or at a certain point of time the same was in possession of the exhibit or the author. An exhibit can be admitted in Court in two circumstances as an exhibit or for identification purposes. An exhibit once admitted in Court is then part of evidence, and if not admitted as an exhibit the Court is barred for referring to the same as part of evidence in record. In the case of ***NITAK LIMITED vs ONESMO CLAUD NJUKA, Civil Appeal No. 239 of 2018,*** Rwizile J. stated on an exhibit admitted as an exhibit or for identification. Cementing on the two aspect he also cited the case of ***DPP vs SHARIFU s/o MOHAMED@ ATHUMANI AND 6 OTHERS, Criminal Appeal No.4 of 2016, CAT*** where the Court stated principles governing admissions of exhibits.

It is from the above cases that I am of the firm view that, the estimations prepared by the garage operator to have been considered in the judgement ought to have been admitted as an exhibit before the Court to form part of evidence, anything else in the contrary since the same was not admitted as an

exhibit barred the court to have considered the estimation as part of evidence during composition of a Judgement.

Not having the said estimations in records excludes the Court from relying on the same. However, the Court stating to have assessed between the estimations and the amount that the 1st Respondent claims that the Appellant was ready to pay is a misconception since the Court was not at a position to have observed the damage caused to the car that was involved in an accident. **Having said all of the above I find the second ground of appeal meritious.**

In determination of the **fourth ground** of appeal the Appellant contest the general damages granted by the Court to the 1st Respondent being **Tshs. 10,000,000/=** without any justifiable reason nor abiding by the principles established for granting general damages. The Respondent supports the Court's decision in the grant of **Tsh 10,000,000/=** and states the Court considered that the 1st Respondent was psychologically affected for not being able to use his car that was engaged in an accident and he also suffered for countless visits to the Appellant's in making follow ups of the matter.

I find it pertinent to remind ourselves that General damages under the jurisprudence of our jurisdiction was discussed in the case of ***P. M JONATHAN VS ATHUMANI KHALFAN 1980***

TLR 175 at page 190 Lugakingira, J (as he then was) stated that:

> ***'The position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the Plaintiff's loss of reputation, as well as to act as a solarium for mental pain and suffering'.***

General damages under our Court falls under the discretion of the Court to be granted and the same has to be done in consideration of the above holding of the Court. General damages requires or are aimed at taking care of the Plaintiff's loss of reputation or act as a solarium for mental pain and suffering. In the trial Court the 1st Respondent's testimony does not include any information of how he suffered psychologically or loss of reputation. The Courts assessment of granting general damages as seen under page 13 of judgement gives lee way for this Court for interfering with the grant since the reason of granting the same does not fall within the principles in the **P.M Jonathan's case (supra). In the circumstance, I find the fourth ground of appeal holds water and has merits.**

Determining the **fifth ground** of appeal, where the Appellant was aggrieved with the Court awarding interest on

the decretal sum at the rate of **40%** instead of the applicable rate of **7% to 12%** of the Court rates; it is stated in the Appellant's submission that ***Order 20 Rule 21(1) of the Civil Procedure Code Cap. 33 [R.E. 2019]*** provides that the rate of interest on every judgement dent from the date of delivery of the judgement until satisfaction shall be **7% and not exceed 12%.** It is the trial Court's error to have granted **40%** which is not the position of the law.

The 1st Respondent joined hands with the trial Court in the order granting him the decretal percentage of **40%** granted by the Court. It was the submission of the 1st Respondent that they urged this Court not to reduce the percentage below **12%** taking into consideration the fact that the 1st Respondent has undergone untold hardship pursuant to the damage caused by the Appellant as assessed by the Court.

It is trite law that the laws of our Land were enacted to regulate various matters that arise from different circumstances. The **Civil Procedure Code Cap. [33 R.E 2019]** having in it the provisions of **Order 20 Rule 21 (1) of the Civil Procedure (supra)** were meant for it to be practicable and applicable whenever need arises. The trial Court is not excluded in any way from being bound by the said provisions. I do not support the contention of the 1st Respondent in urging

this Court not to reduce the same under **12%** for reason set forth by the 1st Respondent. If the Legislature intended that the persons who have suffered more by acts of a Defendant be awarded more than **12%** percent, the same would have been stated in the statute.

Since the Statute is silent upon an increase above **12%** for whatever circumstance that a party has suffered; this Court then finds it unlawful to abide to the 1st Respondent's prayer. It is from the records and the submissions of the parties in records that this Court finds the trial Court has erred in granting **40%** of the decretal amount; **hence this last ground of appeal has merits.**

Having said all of the above**, I hereby quash the proceedings of the trial Court and the decision thereto is set aside. This appeal is allowed with costs.**

It is so ordered.

Right of Appeal Explained.

L. E. MGONYA

JUDGE

15/07/2022

Court:

Judgement delivered before Honourable **V. Nongwa Deputy Registrar** in the presence of Mr. Adam Mwambene for the Appellant, Ms Agness Mtunguja for 1st Respondent and Mr. Richard RMA on this 15th day of July, 2022.

L. E. MGONYA

JUDGE

15/07/2022